

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

In re:

CASE NO. 02-13969-BKC-AJC

OSCAR MARANTE and  
DANETT MARANTE,

Debtors.

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**ORDER DENYING MOTION FOR RECORDABLE ORDER AVOIDING LIEN**

**THIS CAUSE** came before the Court for hearing upon the Debtors' *Motion for Recordable Order Avoiding Lien* (CP 35). The Court heard the proffers, representations and argument of the Debtors. The Debtors' seek an order of the Court in their converted Chapter 7 case avoiding a mortgage lien in favor of U.S. Bank on their homestead which they assert was previously "stripped" under the Chapter 13 plan. The Debtors cite 11 U.S.C. §348(f)(1)(b) to support their position. U.S. Bank has not filed an objection to the motion.

The issue before the Court is whether U.S. Bank should be required to remove its lien based on the Debtors' confirmed Chapter 13 plan, which states that U.S. Bank is totally unsecured and the lien will be avoided. This Court thinks it should not. A creditor should not be bound by a Chapter 13 plan when the Debtors have failed to comply with it themselves. See In re Pearson, 214 B.R. 156, 161 (Bankr. N.D. OH 1997).

Subsection (f) was added to 11 U.S.C. §348 as part of the Bankruptcy Reform Act of 1994 to address secured claim valuations, particularly for the purposes of redemption under §722 in a Chapter 7 case. Subsection (f) provides that the valuation established in the preconversion Chapter 13 case applies in the converted Chapter 7 case and that payments made toward a secured claim

during a Chapter 13 case reduce the amount necessary to redeem the collateral upon conversion to Chapter 7. The general purpose of §348(f) was to equalize the treatment a debtor would receive under a Chapter 13 case that converted to a Chapter 7 case with the treatment the debtor would receive if he filed a Chapter 7 originally. This subsection does not otherwise expressly address or endorse lien stripping, nor does the statute appear to have overturned the well accepted principle that liens pass through bankruptcy unaffected. Dewsnup v. Timm, 502 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903.

The Debtors assert U.S. Bank's lien was stripped in the Chapter 13 case even though no payments were made on the secured portion of the claim, because that portion was zero. The Court believes that such a stance is inequitable. The concept of lien stripping in a Chapter 13 case is to allow a debtor to pay the value of the collateral securing an undersecured creditor's claim, and then have the lien removed. It would be unfair for this Court to avoid U.S. Bank's lien if no payment of the value of the underlying collateral was made prior to the completion of the Chapter 13. "[A]llowing debtors to strip liens that are not subject to redemption in Chapter 7 cases before the completion of the plan would amount to an abuse of the bankruptcy process in light of this Court's understanding of the Bankruptcy Code and the Supreme Court cases on the subject of lien stripping." Pearson, 214 B.R. at 161 (omitting citations). The Debtors cannot claim the particular benefits of lien stripping in a Chapter 13 case when they have not themselves complied with the provisions of their own plan. Allowing the Debtors in this case to proceed in a Chapter 13 for only a year and then convert the case to Chapter 7 and demand to retain the benefits of Chapter 13 (specifically the ability to lien strip) in the converted case is unjust and contrary to the Bankruptcy Code. Accordingly, it is

**ORDERED AND ADJUDGED** that Debtors' *Motion for Recordable Order Avoiding Lien*  
(CP 35) is DENIED.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 16 day of April, 2003.

/s \_\_\_\_\_  
A. JAY CRISTOL, JUDGE  
UNITED STATES BANKRUPTCY COURT